

June 11, 2021

**VIA ECF**

Honorable Edward S. Kiel, U.S.M.J.  
United States District Court, District of New Jersey  
United States Post Office & Courthouse  
Federal Square, Courtroom 8  
Newark, New Jersey 07101

Re: *In re Zytiga Litigation*  
Master Docket No. 19-12107(KM)(ESK)  
*Qui Tam and End Payor Class Action*

Dear Judge Kiel:

The parties to the above-referenced cases have met and conferred at the Court's suggestion regarding modifying the dates contained in the May 19, 2021 Order for initial discovery, and have agreed upon the deadlines included in the proposed order, which is included herewith, except for the inclusion of, and date for, initial disclosures. The parties have one area of disagreement concerning whether or not initial disclosures should be exchanged as part of the initial discovery the Court has ordered. The parties' positions on this issue are set forth below. For the Court's convenience, Plaintiffs included in the proposed order an option for the Court to choose whether initial disclosures "shall" or "shall not" be due.

***Plaintiffs' Position:*** The Court held a status conference regarding Defendants' Motion to Stay Discovery (ECF No. 130, "Defendants' Motion") and Plaintiffs' Letter Request for Limited Discovery (ECF No. 159 "Plaintiffs' Letter Request") on June 18, 2021. During the conference, the Court indicated that it would deny Defendants' Motion and adopt Plaintiffs' proposal regarding the initiation of limited discovery, as reflected in Plaintiffs' Letter Request (ECF No. 159). Although Plaintiffs' Letter Request included a June 14, 2021 deadline for the parties to serve initial disclosures, the Court's May 24, 2021 Order did not include a deadline for initial disclosures. Plaintiffs believe the omission may have been inadvertent, as initial disclosures are relevant and important for all of the

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reasons articulated in Plaintiffs' Letter Request, including because requiring the parties to engage with their clients early about the location of documents and the identity of witnesses likely to have discoverable information is critical to ensuring that each side preserves all potentially relevant information. This is particularly important here, where the conduct at issue began as far back as 2007 and spans over a decade. Initial disclosures will also help kickstart post-motion to dismiss discussions regarding custodians and deponents.

Defendants' contention that it is premature to identify potential witnesses and document locations cannot be squared with their position regarding document preservation. If Defendants are in fact working with their clients to identify potential custodians and preserve documents, communicating that information to Plaintiffs through initial disclosures imposes no additional burden and is in fact required by the Federal Rules. There is no reasonable basis to believe the motions to dismiss will narrow the scope of witnesses or documents. Plaintiffs have made a good faith effort to negotiate with Defendants, agreeing to extend virtually *every* deadline they previously proposed and which the Court ultimately ordered, and proposing a rolling production of documents over the course of two months. Plaintiffs' current proposal regarding initial disclosures likewise reflects a compromise, extending the initial proposed deadline by over 30 days. The proposed deadline is more than feasible – falling over 40 days from this submission. And the motion to dismiss briefing schedule provides no excuse. Briefing has been complete in the End-Payor and Direct Purchaser actions since June 7, 2021. As to the *Qui Tam* action, this is the *third* time Defendants are briefing the motion to dismiss, Defendants have had the Relator's opposition brief since May 20, 2021 and their 20-page reply brief is not due for almost another month. Accordingly, Plaintiffs respectfully request that the Court require the parties to serve initial disclosures by July 16, 2021.

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***Defendants' Position:*** Defendants believe the paragraph regarding initial disclosures should be stricken. It was not in the Court's initial Order and we believe the Court reasonably intended not to include it. It is premature to outline potential witnesses and the location of additional documents until the parties know what claims and cases will survive the pending motions. Plaintiffs' prejudgment that they will prevail on all motions and confidence that the motions will not result in any narrowing of claims or the elimination of these cases is at best premature and not a basis to impose additional burdens on Defendants while they are working on document productions. Plaintiffs argue the initial disclosures are somehow relevant to preservation issues, but there are no significant preservation issues in this case given the underlying patent infringement litigation. Large troves of documents already have been identified for production and document requests will be served later. Initial disclosures at this point serve no purpose other than to impose additional burdens on Defendants while they are working on their initial document productions scheduled to commence August 11. Plaintiffs' additional points attack strawman arguments.

Defendants believe the initial disclosures were intentionally excluded for sound reasons, but if the Court had intended for them to be included, Defendants propose the deadline be no earlier than August 3, in light of the work that will be required to prepare for and commence the requested document productions on August 11. In arguing for a July 16 date in 40 days from today, Plaintiffs forget that one basis for adjusting the dates was not to start any of these initial discovery efforts until after the briefing is complete on July 5. August 3 is less than 40 days from July 5.

Respectfully yours,

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